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To: 'microsoft.atr(a)usdoj.gov'
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Subject: Real penalties and permanent oversight for Microsoft, please

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9 January 2002

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Dear Ms. Hesse;

I am a citizen of the United States. I work in the information technology industry. I believe that it would be disastrous for me should all the tools of my livelihood be owned by a single corporate entity, no matter how well intentioned. This is what Microsoft intends. The evidence revealed in court which led to their antitrust conviction indicates that Microsoft is not well intentioned.

I am profoundly concerned that, in the matter of US vs. Microsoft, the penalty phase of the trial is being managed by the convicted defendant in such ways as to increase their monopoly over today's information technology and, even more importantly, that of tomorrow.

The far-reaching consequences of this de facto reversal of the anti-trust trial verdict would be difficult to overestimate. It is no exaggeration to say that this is a matter that will impact every life on this planet for many lifetimes to come.

Because of the importance of this issue (in my view), I will also fax this letter to you at 202/616-9937.

It is critically important that real, far-reaching and controlling penalties be assessed against Microsoft. Their very settlement proposal shows that the corporation's unbridled ambitions include actual control of every possible future application of information technology. The tendrils of this plan reach deeply into matters of the defense of this country and its economic health, in ways so insidious that they can be nothing but another Microsoft plan for market dominance.

This time, Microsoft is clearly thinking of the big picture. They are thinking of the entire nation and its governance. They are thinking of the entire global economy. They want it all. Their proposed settlement is another covert, gift-wrapped mechanism to achieve ambitious and self-serving ends.

Microsoft is not sorry that it has performed monopolistically. They are ceaselessly, incurably, rapaciously ambitious. They have been found guilty; the punishment you help to assign must somehow enforce a curb upon their avarice and ability to infiltrate the fabric of our entire lives.

Serious penalties are called for. Constant oversight is called for. The proposed settlement includes neither of these elements.

I could synthesize my own arguments for your consideration, but others, better informed and more knowledgeable, have already done so. I will quote them extensively, and hope you will consider the wisdom of their words.

From Dennis E. Powell of LinuxPlanet:

"The . . . proposed settlement . . . would grant Microsoft its operating system monopoly -- indeed, contains wording such that it would no longer be illegal for Microsoft to maintain that monopoly -- while saying that if

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Microsoft wants to, it can make it easier for people to write Windows applications, but it's by no means required to do so. In short, the settlement is a travesty, an ill-advised embarrassment that flings down and dances upon the law and upon all but the most twisted notion of justice.

"I cannot see how the settlement that is proposed even pretends to remedy the antitrust violations for which Microsoft has been found culpable. The company has, I remind the judge, already been found in violation, and this is the penalty phase of the case, but the settlement contains no penalties and actually advances Microsoft's operating system monopoly. A just penalty . . . would at barest minimum include three additional features:

- * Any remedy seeking to prevent an extension of Microsoft's monopoly must place Microsoft products as extra-cost options in the purchase of new computers, so that the user who does not wish to purchase them is not forced to do so. This means that for the price differential between a new computer with Microsoft software and one without, a computer seller must offer the software without the computer (which would prevent computer makers from saying that the difference in price is only a few dollars). Only then could competition come to exist in a meaningful way.

- * The specifications of Microsoft's present and future document file formats must be made public, so that documents created in Microsoft applications may be read by programs from other makers, on Microsoft's or other operating systems. This is in addition to opening the Windows application program interface (API, the set of "hooks" that allow other parties to write applications for Windows operating systems), which is already part of the proposed settlement.

- * Any Microsoft networking protocols must be published in full and approved by an independent network protocol body. This would prevent Microsoft from seizing de facto control of the Internet.

"I . . . point out that if the national interest is at issue . . . and as the judge has suggested . . . it is crucial that Microsoft's operating system monopoly not be extended . . . I quote the study released a year ago by the highly respected Center for Strategic and International Studies, which pointed out that the use of Microsoft software actually poses a national security risk. In closing, I say that all are surely in agreement that the resolution of this case is of great importance, not just now but for many years to come. This suggests a careful and deliberate penalty is far more important to the health of the nation than is a hasty one."

"A settlement more along the lines of the one I propose above would greatly benefit Windows users as well, because competition would force Microsoft to improve the quality of its products in areas including but not limited to reliability and security. The settlement before the judge would benefit only Microsoft; a sterner settlement would benefit everybody.

I ask the judge to consider that the proposed settlement hurts each and every one of us in this nation in real, tangible ways. The proposed settlement should be rejected as ineffectual and again a tool of monopoly for Microsoft.

Here are the words of a California system administrator, with which I whole-heartedly agree:

"As the Network Administrator . . . it is my responsibility oversee the deployment of new technologies to our company. My position gives me ample freedom to implement whatever software or hardware I see necessary to keep the company network running smoothly and to satisfy user requests. Unfortunately, though my position may give me that freedom, the current software economy cannot. . . .

"I would dearly love to replace all Microsoft technology in my office with Open Source software, and if the software economy give me as much freedom as my job did, I would do just that. However, the most defeating problem is what Microsoft chooses to keep secret -- it's network protocols, the layout of its Office files, and the precise technology needed to migrate from their

email server. . . . I am asking the court to force Microsoft to publish these protocols in detail.

"I am also urging to court to act on future technologies as well. Microsoft is now planning to add vast pieces of the Internet to its web of interdependencies. With its initiative .Net, whole portions of the web would be cut off from non-Microsoft technologies. We have seen a glimpse of the monopolist's vision of the future with the UK and MSN portal, designed by Microsoft and accessible only with Microsoft technology. . . ."

From a Canadian university (a nation whose economic fortunes are inextricably tied to those of the United States) comes a very specific analysis with which there can be no cogent argument, because it raises the issue of the user's right to his or her own data:

"Because the most successful competitors in recent years in product markets in which Microsoft holds a true or de facto monopoly (e.g. personal computer operating systems, Internet browsers, and office productivity software) have arisen from the open source software community, I believe it is of extreme importance that any settlement protect and enhance this community's ability to produce products that provide end-users with viable choices.

"In my reading of the proposed settlement, such protection is not provided. On the contrary, the settlement will serve to allow Microsoft to continue to hinder the open source software community's efforts.

"The proposed settlement speaks of disclosure of APIs and licensing of intellectual property. I fear that any information disclosed by Microsoft will only be licensed to vendors or developers under conditions of a non-disclosure agreement, thus preventing the implementation of such protocols in an open source project or product.

"This settlement, if implemented as proposed, will serve to entrench Microsoft's monopolies further, by allowing it to exclude the open source software community from any future technologies and APIs it develops. As this community is currently one of Microsoft's most serious competitors, it seems unbelievable that the proposed settlement will aid Microsoft in eliminating this 'threat' to their monopolies.

"As an example of the current 'problem' of Microsoft's monopoly in the OS and office productivity software markets, I point to the ubiquitous '.doc' file. This one proprietary file format I believe is one of the cornerstones of Microsoft's OS/productivity suite monopoly. Many people I know in the academic and business communities regularly purchase updated versions of Microsoft Windows and Microsoft Office for the sole reason that their correspondents send them .doc files as e-mail attachments. The options for importing these files into 3rd party applications are many; however, having personally tried a large number of such programs, both free and commercial, I can safely say that many work well some of the time, none work well all of the time. The continuing cycle of forced upgrades to maintain compatibility with correspondents lies at the heart of Microsoft's monopoly.

"As a solution to this kind of problem, I believe that Microsoft should be compelled to disclose the specifications of the file formats used by its products to anyone who sends or receives files in such formats and requests the information.

"Left unsolved, this problem is bound to be more severe in the future. It has been widely reported recently that Microsoft is considering moving to a yearly licensing-fee system for its OS and Office software. In this case, files created with licensed software and saved in proprietary formats may be permanently unavailable to the creator or owner of the data in the file if a user or company chooses to terminate its license. I may own the copyright of the work I create, but that is of little value if the only copy of the work in existence is one saved in a format to which I do not have access.

"Of course the .doc file format is not the only proprietary file format

Microsoft products use, and the arguments above apply equally well to other products and file formats. The .doc format is likely the most important however, because text-based documents appear to be the most commonly shared and transmitted.

"A second cornerstone of Microsoft's monopoly is the fact that many computer manufacturers will not sell computer hardware without a Microsoft OS. I understand that the proposed settlement will prevent Microsoft from entering into exclusive arrangements with vendors, but I believe that stronger protections are required.

"If Microsoft's agreements with computer vendors forced the vendor to disclose to the computer purchaser the price of the Microsoft products included, it would help consumers choose products and vendors that were appropriate to their needs. As an example, I point to Dell which will, as far as I can tell, not sell a computer without a Microsoft OS and office productivity suite. If purchasers knew that without these products they could save some number of dollars, that now often amounts to a sizable percentage of the computer package purchase price, they could apply pressure to the vendor to provide alternative (likely less expensive) products. Microsoft has stated concerns that selling computers without operating systems equates to software piracy. This assertion is absurd, and has become irrelevant with Microsoft's newest release of Windows XP, which requires license activation.

"Having consumers and end-users with more information is clearly in the public interest. All of what is suggested here concerns supplying information that enables computer users to make informed decisions, and to access their own work on their own computer.

"In summary, I believe the proposed settlement is seriously lacking, and will, if implemented as proposed, aid Microsoft in its efforts to hinder its most viable competitors. Any successful settlement must protect the rights of computer users to choose the products they desire to access their data."

If much of the legal profession is about finding loopholes (it is), then accountancy is about closing them. So it's not surprising that a certified public accountant found a glaring and terrible loophole in the proposed settlement and argued that it should be eliminated:

"Another issue I have with the proposed settlement is the restrictions that are placed on the entities with which Microsoft must share their API's. In the explanations I have seen of the proposed settlement these entities are restricted to 'commercial' ventures, implying for-profit status. This is simply wrong and way too restrictive. I believe that to be truly effective the parties with whom Microsoft should share their API's and the like should be broadly defined, maybe something like 'any party or entity that could potentially benefit from such information'.

In other words this information should essentially be in the public domain."

Many of us are simply and plainly harmed by Microsoft's business practices. From Microsoft's own back yard, Seattle, a commentator considers the specifics of the proposed settlement. She provides a compelling illustration of how she is personally damaged by the Microsoft monopoly:

"Microsoft has been determined guilty of violating anti-trust laws and the penalty phase just seems to miss the mark. I am hearing comments on the street that the U.S. Government is now a wholly owned subsidiary of Microsoft. I will admit that I find the 'penalties' somewhat perplexing in that they certainly seem to miss the mark rather completely.

"I personally think that is probably a little radical, but then I see demo copies of Microsoft's XP operating system on all the workbenches of my local post offices and I do wonder what is going on here. I do not see any other vendors' product demos available there. (Doesn't) this seem to indicate implicit approval of Microsoft products and no other by a government entity?

"The following are the flaws that I see in the 'penalties' that essentially seem to leave Microsoft better off than they were before the trial.

". . . there is no separation of integrated software that harms and stifles competition to the Microsoft operating system. Further I see no provisions for computer manufacturers to be able to offer other and more viable operating systems in a fair and price competitive atmosphere - essentially nothing has changed (under the terms of the proposed settlement).

"I do not see that the proprietary protocols for the operating system, networking and other elements are to be made public in order that others may have equal opportunity to develop applications in a spirit of healthy competition and to encourage innovation. Microsoft appears to be allowed to maintain the closed, proprietary and monopolistic systems that started this process. Again it appears that nothing has changed and it will be business as usual for Microsoft.

"In Washington State, Microsoft continues with its obnoxious and heavy handed practices, only now in a new area. Their handling of their Internet Service Provider (ISP) business seems to be following the same basic marketing strategy that they used with their operating systems. This has even been noted in the Seattle Times newspaper, in a city where normally Microsoft can do no wrong:

http://seattletimes.nwsourc.com/html/localnews/134378212_qwest14m0.html

"Again, it appears to be business as usual for Microsoft.

"Thus I am perplexed at the current 'penalties' being 'imposed' on Microsoft. They seem to be more of an encouragement for Microsoft to continue in the same ways it has been and those are the very same ones that brought this issue to the DOJ in the first place. If these are implemented as currently stated, then fair business practices, innovation and competition are DEAD in the computer field.

"I do use Microsoft products; a very few are reasonably decent but I am forced to use others because the only option I have for them is other Microsoft products. Because of this, my time is considerably less efficiently used in repairing and working to keep the systems going rather than accomplishing work that I need to do. If one does not expect much from the computers running Microsoft products then they are not the absolute worst products on the planet. If you expect much from them and / or use them heavily then you are going to rather constantly . . . have them fail (with resulting) loss of time, effort and money. On days when I am working hard it is common to have to reboot my machine to recover my working ability at least several times. As time goes on from the initial (or subsequent complete re-install of the operating system) the situation grows steadily worse. The overall cost of running Microsoft products is incredibly high and far higher than it ever should be were Microsoft concerned with more than creating a market for the next version of its products. Bluntly, quality is not job one.

"In order that Microsoft be brought into line and with any hope of curbing their horrid business practices, it will take REAL penalties and serious oversight. With the obscene amounts of money that Microsoft has managed to accumulate through its less-than-fair business practices . . . there is some doubt as to whether that can actually be accomplished. It has become quite obvious to anyone working in the field that there is no honor or integrity in Microsoft, only the search for more money in complete disregard for the good of the industry, the users . . . at this point in time it becomes rather blatantly obvious that national security is at risk due to the poor quality and serious lack of attention to security that is (an) epidemic in their products. That alternatives are few is a direct result of the issues that DOJ is supposed to be addressing in this matter.

"I've been told that I am wasting my time here, in that Microsoft can pay people to submit positive comments for this business enhancing solution that

has been proposed as a 'punishment'. They have done the same things in the past; that is pretty much common knowledge. I can only hope that DOJ will prove wise, not be bought out by Microsoft and free the industry for the good of the consumer and the country."

A computer professional who has a long list of certifications -- including some from Microsoft -- makes the point that competition is the only assurance of high quality:

"Microsoft products, by virtue of being (created by) a monopoly, have been designed without concern for security or reliability. I can prove that the design of Microsoft products leads to the spread of countless virii in the computer industry. They (Microsoft products) are the perfect products to use to send damaging virus from many groups like the terrorists from Afghanistan, Israel, Palestine, Egypt.... And do not imagine that these places have not already done damage.

"And it is not only because Microsoft products are in such wide use, but the real problem is that the products have been very poorly designed. It seems Microsoft has enough money to do the job right, so the remaining reasons why the products are so poorly written is that there is currently no need to be 'best of breed' when you are the only option.

"It will not be long till they (the terrorists) discover that they can inflict hundreds of billions of dollars in damage. All this because Microsoft has a virtual monopoly, and instead of actually writing well-designed programs, they spend all the energy they have to simply maintain that monopoly.

"Often I give speeches to information technology groups that state, 'Without Microsoft in the industry, we would be at least 10 years ahead of where we are today'. But because of the constrictive designs and monopolizing practices of Microsoft, no possible competitive products have been able to get a start.

"As just one example: IBM wrote a fine operating system called OS/2 in 1992. Only today, some 9 years later, is Windows XP beginning to catch up to the technical capability of OS/2. In fact it still has a long way to go to catch up to OS/2 in security and reliability. What happened? IBM could not get any hardware vendors to carry the software because Microsoft had tied up all manufacturers of computers to include with each and every computer, a copy of Windows. This in spite of the fact that many wanted to use OS/2 instead of Windows. What happened to anyone who decided to use OS/2 was (that) they also paid (for) and received a copy of Windows that they did not desire.

"The only way to get the marketplace back in order is to separate the computer hardware from the operating system. When you go to a store to buy a computer, you should be able to buy any computer available without having to also purchase an operating system. That choice should be made at the time of purchase rather than (be forced through software) included in the cost of the computer. . . .

"(This situation) is much akin to buying a car, and with that car purchase also comes a coupon for gasoline from the Microsoft Gasoline Company. We agree that the car uses gasoline, and we all buy gasoline, but what if we prefer to buy gasoline from Shell rather than prepay for gasoline from the Microsoft Gasoline Company? Should we not have the option of not prepaying for fuel from the Microsoft Gas Company? . . ."

From Rick Hohensee of the cLIeNIX distribution comes a substitute remedy proposal:

"(It would be best if) the Court declares Microsoft operating system products 'criminally compromised intellectual property'. This is a special state of copyright protection vacancy, under which Microsoft operating system products lose their patent and copyright protections exactly five years after their release dates

"First off, it has (the) one essential characteristic of anything that will be effective upon Microsoft, simplicity. They feed on loopholes. There are none in the above. There's nothing they can do about the Fed not protecting the copyrights their existence depends upon.

"There is nothing for them to cooperate with.

"This doesn't require any cooperation or good faith from Microsoft, which is also crucial. (They may actually favor this remedy, however.) . . .

"It does actually partially break their monopoly. The AOLs and Oracles and Rick Hohensees of the world can produce their own alternatives to Windows, based on older versions of Windows. (I personally have to be very well paid to look at a Windows desktop, but distastes vary. I use Linux.)

"The focus is on the software others are dependent on, (the) operating systems. This leaves Microsoft untouched as to application products such as Office. . . .

"What goes in an OS, where they expend their energies, all product design decisions and so on remain with Microsoft. Federal micromanagement of Microsoft is avoided, to everyone's benefit"

Another correspondent, from England, makes comments that must be seen in the Federal Register. They neatly address further Microsoft plans to manage national and world trade through monopolistic practices identical to those for which Microsoft was convicted.

"MS is desperate to stop Linux from competing in the client /server market by enforcing an MS client/MS server strategy. An example of this is the recent non-standard extensions to Kerberos so that if companies have MS clients they will find the encryption protocols may only work properly when they're talking to MS servers. This is to be expected from the company that continuously muddled the waters on SMB.

".NET is really an extension of the same principle, though the spinmeisters at Redmond make sickening paeans to Open Standards with their 'XML Foundations' nonsense.

"Let me give you an example of Microsoft's commitment to XML as an open standard for data exchange - taken from the December 2001 issue of Linux User in an interview with OperaSoft's Haakon Lie:

"MS office claims to support XML but it writes the XML tags inside HTML comments so that they can not be found (by non-MS software). Even if the software then knew how to find the XML tags it would not know how to interpret them as the format used for the tags is proprietary!

"I think this tells you all you need to know about Microsoft's conversion to XML.

"What about those of us who do not live in the US? Microsoft's policies affect the entire world - how do the rest of us try and have a say in this? I speak as someone who lives in a country whose government has decided to hive off the public sector IT infrastructure lock, stock and barrel to Microsoft, and whose leader, Tony Blair, goes weak-kneed in the presence of Bill Gates. Britain is about to become the first reference site in the world for .Net, if Gates gets approval from the government to roll out a multi-billion dollar 100% MS solution for the tax authorities. In the last month it has been announced that the National Health Service and the Ministry of Defence have signed deals to put *all* of their desktops under one MS licensing contract. In three years time, if they want to carry on using the software, they will have to pay whatever amount MS demands (the joys of software rental). The lion's share of government contracts (in pound sterling terms) have gone to EDS, a company which makes no secret of the

fact that it is little more than a value added reseller for Microsoft (all of EDS's costly 'solutions' are 100% MS)."

Please consider that the U.S. government has made much of globalization. It is a good idea for the government to understand that in cases such as this one, which have a global impact, this means responsibility for corporate behavior within the boundaries of the United States. Additionally, parties injured by the actions of American companies, which actions took place in the U.S., have standing by every standard I can find.

Finally, I will quote another wise man, a Floridian with more intensive software industry experience than mine, who speaks to the point of freedom of choice for the consumer:

"I am a Software Developer who has worked in the industry for almost 10 years. I have used many Microsoft products, and have enjoyed the increasing abilities of software systems developed by Microsoft. I also enjoy using other operating systems, but as a software developer, I have to follow market trends to keep myself fed - regardless of the market trends.

"However, it is apparent to any casual software user that Microsoft has attempted to maintain a monopoly on the Internet Web Browser market. It is more apparent to a software developer who works within Microsoft operating systems. The technical aspects involved in the operating system itself (specifically, development with the Microsoft Foundation Classes and use of '.Net' technology) marries the software developer (happily or unhappily so) to Internet Explorer, and the operating system.

"Furthermore, specific training programs such as MCSE (Microsoft Certified Software Engineer) and MCS D (Microsoft Certified Solution Developer) are geared towards maintaining the Internet Browser market by way of gearing Microsoft Certified individuals (who pay for courses and tests!) to use only Microsoft Products.

"Operating Systems.

"Software.

"Software Development.

"In an Internet enabled world, these are the tools for maintaining a monopoly on the Internet Browser Market.

"One could argue that nobody else has attempted these things on the level that Microsoft Inc. has. Yet that is my point. Nobody should. Freedom of Choice.

"The newer versions of Windows have the Internet technologies wrapped in them. This IS an obvious attempt to maintain a monopoly on the Internet Browser market. They may be able to prove that they did not do it 'on purpose', but they have done it. If I run over a man with my car, and I broke a traffic law while doing so, the offense is manslaughter. If I planned to do it (premeditated), it's Murder 1. The fact remains that a man would be dead.

"Odds are that when this is read, it will be read on a Windows NT 4.0 machine. Why? Because the U.S. Government has certified Windows NT 4.0 as a secure operating system. Furthermore, this mail message will probably be read through another one of Microsoft's applications.

"The U.S. Government, for lack of any other 'secure' operating system, has gone with the highest bidder. Neil Armstrong quipped about going to the moon on everything built by the lowest bidder, and here the United States states that we'll go with the ONLY software manufacturer that creates an operating system. This seems counterintuitive. Freedom of Choice. If you need more proof than the software that the reader of this document is using, and my ability to predict that, I'm at a loss.

"These two points highlight the fact that the average American consumer is paying more than once for the same software - first as consumers, then as taxpayers. When banks charge twice for ATM withdrawals, we cringe and say that it may be legal, but it is obviously immoral. Given, the hardware manufacturer is hiding the price of the operating system on new computer systems, the fact remains the same.

"This is a sticky situation, but legal recourse in the interest of the people of the United States (and the rest of the world!) should contain the following items:

"(1) Microsoft products - or products of any software manufacturer - must be sold as separate items by computer vendors. Users can then make a CONSCIOUS choice. Other software manufacturers then also have a chance to compete. Installation of the USER SELECTED software can remain free.

"(2) Any Microsoft networking protocols must be published in full and approved by an independent network protocol body. This would prevent Microsoft from seizing de facto control of the Internet.

"(3) The specifications of Microsoft's past, present and future document and network formats must be made public, so that documents created in Microsoft applications may be read by programs from other makers, on Microsoft's AND other operating systems. This is in addition to opening the Windows Application Program Interface ('Windows API', the set of "hooks" that allow other parties to write applications for Windows operating systems), which is already part of the proposed settlement.

"(4) The level Microsoft is certified by the Software Engineering Institute must be made public to the consumer, as well as insight into their development process for Operating Systems. SEI level 3 is required by the United States Government for software companies that supply software to it (or that was coming in 1999). This certification was created to protect the government from software manufacturers that had no software development process. This same certification should protect the average consumer, AND insight into the Software Development Process for creation of their operating systems would give software manufacturers a chance to keep up with Microsoft.

"(5) Device Driver information for new operating systems MUST be made public prior to the release of the operating system by a minimum of 6 months. This is VERY important when dealing with future web enabled embedded devices. This is also very important to the average consumer - they get a better product!

"This judgment is not only of import to the United States, where it is a national issue. It is in fact an INTERNATIONAL issue, since the monopoly itself extends to all corners of the world. Judgment in this case MUST be fair to the consumer, because future cases along these lines will look toward this precedent. And, in future, it may not be as domestic an issue.

"Furthermore, if Microsoft Inc. were a foreign company, this would be seen as a security issue. It should be seen this way despite the fact that Microsoft is a domestic software manufacturer, (and) for the SAME reasons.

"Please realize that the implications in an Internet based society reach further than the next few years. They affect society ad infinitum."

Please do not allow this travesty of a negotiated settlement to warp this nation's future. Please do not allow the tools of production to remain in a single pair of grasping corporate hands.

Thank you for your consideration. Please help the judge to make careful and considered choices. The task before you now is to rein in this corporate megalith and constrain its future behavior into conformity with the letter and spirit of the law. The richest must not be allowed to legislate for all

of us, with no end other than their further enrichment.

That isn't justice.

Thomas M. Barclay

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